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George A. Santos  
Director

## **Interim Policy for H-2B Prevailing Wage Determinations**

Effective Date of Policy: May 1, 2013

This Interim Policy affects Temporary Labor Certification applications filed on or after May 1, 2013. The Guam Department of Labor will change its current methodology used in issuing Prevailing Wage Determinations for non-construction H-2B positions. Wages determinations shall now be based on the USDOL Occupational Employment Statistics (OES) Mean rate.

A recent U.S. District Court decision vacated the federal regulation that enacted the 4-tier system that had been used to determine H-2B Prevailing Wage rates in recent years. With the 4-tier wage level system vacated by court order, reverting to the prior system of using the OES Survey mean rate for non-construction prevailing wage determinations will keep Guam in line with federal regulations and prevent findings of adverse effect by the USCIS when adjudicating H-2B applications. Current policy and regulations allow for this change without additional rulemaking\*.

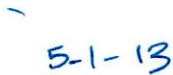
The regulations for Common Construction Prevailing Wage Rates in Guam were not affected by the court ruling and remain in effect without change. Employers will not see any change in common construction prevailing wage rates until USCIS updates the rates sometime in the future.

Employers who have valid Prevailing Wage Determinations and have not filed an application will be required to re-apply for a new determination with the new application. All prevailing wage determinations issued before May 1, 2013 are hereby deemed expired and will not be honored after May 1, 2013. Employers who possess valid Temporary Labor Certifications will still be locked into the rate on the certification and may continue to pay that rate until the certification expires. This will allow affected employers time to adjust to the new rates.

Employer provided surveys will not be allowed as alternate means of determining prevailing wages as no regulatory authority currently exists in current regulations.

This interim policy shall remain in effect until amended or superseded by future policy or rulemaking.

  
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GEORGE A. SANTOS  
Director of Labor

  
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Date

**APPROVED BY:**

  
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EDDIE BAZA CALVO  
Governor of Guam

  
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Date

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\*Regulations at 8 CFR 214.2(h)(6)(v) contain Guam's regulations for establishing the method for Prevailing Wage Determinations and allow the Governor of Guam to establish the methodology for determining prevailing wage rates. The Governor's policy using the mean rate supplemented by BLS data was published in the Federal Register at Vol. 50, No. 3, Friday Jan. 4, 1985 / Notices pursuant to procedures in 8 CFR 214.2. See also, 7 G.A.R.R. Section 7112 (United States laws, rules and regulations applicable in Guam and relating to the employment of Temporary Alien Workers are incorporated).